

BOARD OF APPEALS CASE NO. 5290

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BEFORE THE

APPLICANT: Roy E. Moxley, Sr.

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ZONING HEARING EXAMINER

**REQUEST: Expansion of a non-conforming use
and variance for an existing structure;
1043 Priestford Road, Darlington**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/18/02 & 9/25/02

HEARING DATE: November 4, 2002

Record: 9/20/02 & 9/27/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Roy E. Moxley, is requesting a variance, pursuant to Section 267-21 of the Harford County Code, to enlarge an existing non-conforming structure and a variance, pursuant to Section 267-26C(1), to allow an existing accessory structure with an addition to be more than 50% of the habitable space of the principal building in an AG District.

The subject parcel is located at 1043 Priestford Road, Darlington, MD 21134 and is more particularly identified on Tax Map 27, Grid 3D, Parcel 108. The parcel consists of 2.8879± acres, is zoned AG and is entirely within the Fifth Election District.

Mr. Roy E. Moxley appeared and testified that the existing barn is used for the storage of farm equipment. That equipment is used to operate the adjoining 118 acre farm that he owns together with other family members. The existing house was built in 1947 and the current barn in 1965. The barn was enlarged in 1977 and again in 1978 and is totally about 3000 square feet. The addition planned is 792 square feet. This enlargement will be used to house farm equipment similar to what has been housed there for nearly 40 years. His closest neighbor is his brother, about 400 feet away and the adjacent Thompson farm is about 1000 feet away. The Applicant did not believe there would be any adverse impacts.

Mr. Kevin Small appeared and qualified as an expert landscape architect. Mr. Small described the various stages of additions that this barn has undergone over the years and concluded that the barn is an existing nonconforming use. The addition will be less than 50% of the existing structure. There are no adverse impacts associated with the addition in the opinion of the witness.

Case No. 5290 – Roy E. Moxley, Sr.

The Department of Planning and Zoning found that the subject parcel was unique and that the Applicant meets or exceeds all of the requirements of the Code.

CONCLUSION:

The Applicant, Roy E. Moxley, is requesting a variance pursuant to Section 267-21 of the Harford County Code to enlarge an existing non-conforming structure and a variance pursuant to Section 267-26C(1) of the Harford County Code to allow an existing accessory structure with an addition to be more than 50% of the habitable space of the principal building in an AG District.

Harford County Code Section 267-21 provides:

“Enlargement or extension of nonconforming buildings, structures or uses.

The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity.
- C. The enlargement or extension does not violate the height or coverage regulations for the district.
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.
- E. The limitations, guides and standards set forth in § 267-9I, Limitations, guides and standards, are considered by the Board.”

Case No. 5290 – Roy E. Moxley, Sr.

Section 267-26C(1) provides:

“Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- (1) In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory use or structure shall neither exceed fifty percent (50%) of the square footage of habitable space nor exceed the height of the principal use or structure. This does not apply to agricultural structures, nor does it affect the provisions of § 267-24, Exceptions and modifications to minimum height requirements. No accessory structure shall be used for living quarters, the storage of contractors' equipment nor the conducting of any business unless otherwise provided in this Part 1.”**

Section 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

In examining requests of this nature, impacts that may be associated with such an enlargement or extension, the Hearing Examiner is guided by the Limitations, Guides and Standards set forth in Section 267-9I of the Harford County Code and finds as follows:

Section 267-91:

- (1) *The number of persons living or working in the immediate area.***

This area of the County is rural in nature with no major residential developments. This property has been used to support the larger adjoining farm operation for 40+ years and no additional employees will result from the grant.

Case No. 5290 – Roy E. Moxley, Sr.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Approval of this request should have no impacts on vehicular or pedestrian traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposal is a use that is permitted in the Agricultural District with Board approval. The use should not have an adverse fiscal impact.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

This is not applicable to this request.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The County's local Sheriffs Department and the Maryland State Police will provide police protection. Fire protection will be primarily from the local volunteer fire department. Water and Sewer is provided to the site from an on site well and septic system. The Applicant is required to obtain a private hauler to dispose of trash themselves.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

Residential and accessory structures are a permitted uses in the AG zone. principles.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

Not applicable to this request.

Case No. 5290 – Roy E. Moxley, Sr.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan. The Zoning Code recognizes the existence of non-conforming uses and the need to provide minimal renovations, enlargements or extensions of those uses.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There are no environmental features that will be impacted by this request.

- (10) *The preservation of cultural and historic landmarks.*

Not applicable to this request.

The proposed use is the same as it has been for over 40 years. The enlargement will not exceed 50% of the existing structure. The enlargement will conform to height and coverage regulation and there will be no impact to traffic safety.

Based on the foregoing findings of fact and conclusions of law, the Hearing Examiner recommends approval of the subject request, conditioned upon the Applicant obtaining any and all permits and inspections.

Date NOVEMBER 25, 2002

William F. Casey
Zoning Hearing Examiner